BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:	)	
	)	
Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana	)	**CC Docket No 01-277**

DECLARATION OF JOSEPH GILLAN

I, Joseph P. Gillan, being of lawful age and duly sworn, do hereby depose and state as follows:

<u>Professional and Educational Background</u>

1. My name is Joseph Gillan. My business address is P. O. Box 541038, Orlando, Florida 32854. I am an economist with a consulting practice specializing in telecommunications.

2. I am a graduate of the University of Wyoming where I received B.A. and M.A. degrees in economics. My graduate program focused on economic issues unique to regulated industries, including the telecommunications industry. As part of my graduate program, I served an internship with the Mountain States Telephone and Telegraph Company as an econometrician analyzing the price elasticity of local access service.

3. From 1980 to 1985, I was on the staff of the Illinois Commerce Commission where I had responsibility for the policy analysis of issues created by the emergence of competition in regulated markets, in particular the telecommunications industry. While at the Illinois Commission, I served on the staff subcommittee for the NARUC Communications Committee and was appointed to the Research Advisory Council overseeing the National Regulatory Research Institute.

4. In 1985, I left the Illinois Commission to join U.S. Switch, a venture firm organized to develop interexchange access networks in partnership with independent local telephone companies. At the end of 1986, I resigned my position of Vice President-Marketing/ Strategic Planning to begin a consulting practice. Over the past twenty years I have provided testimony before more than 35 state commissions, five state legislatures, the Commerce Committee of the United States Senate, and the Federal/State Joint Board on Separations Reform. I currently serve on the Advisory Council to New Mexico State University's Center for Regulation.

5. I have been asked by AT&T Corporation to evaluate BellSouth's claims regarding the level of local competition in Georgia and Louisiana. Although sponsored by AT&T, my perspective is that of an economist that has advised a wide range of competitive clients on local entry and market conditions over the past decade. The purpose of this affidavit is to apply that experience to the portrayal of local market conditions described in the affidavit of Victor K. Wakeling ("Wakeling Affidavit"). As I explain below, the Wakeling Affidavit alleges a level of competition in Georgia and Louisiana that is contradicted by a closer examination of the facts, and is far from the competitive

environment the Commission should expect if BellSouth were actually providing entrants nondiscriminatory access as required by the Telecommunications Act.[1]

Overview

6. There are three basic entry strategies to the local market: (1) the resale of BellSouth's retail services, (2) the use of unbundled network elements (UNEs), alone and in combinations, and (3) the construction or lease of other facilities to connect directly with end-users. According to BellSouth, "irreversible" competitive activity – summarized in Table 1 (below)[2] – is occurring using each of these entry strategies.

Table 1: Summary of Competitive Penetration as Claimed by BellSouth[3]

Entry Strategy	Georgia			Louisiana	
	CLEC Lines	% Share		CLEC Lines	% Share
Resale	100,493	2.1%		85,682	3.4%
UNEs	228,639	4.7%		31,881	1.2%
Other[4]	477,684	9.8%		101,910	4.0%
Total CLEC	806,816	16.6%		219,473	8.6%
Total BellSouth	4,060,844			2,333,635	

1 The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

2 BellSouth revised downward its estimate of "Other" lines in an Ex Parte filed on October 10, 2001. *See* Letter from Sean Lev to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket 01-277. The analysis in this Declaration incorporates BellSouth's revised estimates.

3 The Wakeling Affidavit "estimates" competitive activity in each State using two methodologies that produce slightly different results, at least with respect to the "resale" and "other" strategies. The summary presented in Table 1 reflects the average of the two methodologies reported in the Wakeling Affidavit.

4 The "Other" category includes all entry that connects directly to end-users using facilities provided by the CLEC, by a third-party, or through the lease of facilities from BellSouth as other than UNEs (such as special access).

7. Before critiquing BellSouth's claims in more detail, a few threshold observations are appropriate. To begin, it is useful to note that there is no need to "estimate" the level of CLEC activity for two of the three entry strategies because the level of CLEC activity using resale and UNEs is (or, at least, should be) known with precision. Each of these strategies rely on facilities/services purchased directly from BellSouth and, therefore, no "estimation" should be necessary. Significantly, most of the competitive activity that BellSouth claims exists – ranging between 46% (Louisiana) and 60% (Georgia) of *all* CLEC activity in these States – involves "other" forms of facilities-based entry that BellSouth cannot measure directly, but must estimate. Consequently, the accuracy of BellSouth's portrayal of CLEC activity depends largely on whether its estimates of these "other" facilities-based strategies are plausible.[5]

8. Moreover, the other key variable in BellSouth's market share analysis is the number of access-lines (and their equivalents) that BellSouth reports for itself. For BellSouth's analysis to be valid, BellSouth must not only accurately estimate the level of CLEC lines, it must properly count its own facilities as well. Although arriving at an accurate count of BellSouth's lines may not seem controversial, BellSouth has excluded from its analysis any local capacity sold as a "special" access arrangement, substantially reducing its relative share. Finally, before the Commission should attach *any* significance to BellSouth's estimates of local competition, it is important to look beyond

[5] For simplicity, I use the term "other facilities-based entry" in the remainder of this affidavit to refer to all entry other than resale and UNEs. Although UNEs are often considered a form of facilities-based entry, the estimation problems posed by UNEs are far different than those involving other forms of facilities-based entry.

the mere level of CLEC lines (even where accurate) to consider the trends affecting those volumes.

Resale-Based Competition

9. As summarized in Table 1, resale continues to represent a significant percentage of the reported competition in Georgia and Louisiana. The continued "prominence" of resale in BellSouth's local competition statistics, however, is largely a *relative* phenomena – that is, because local competition overall remains small, resale still plays a relatively large role. Moreover, BellSouth's *static* analysis overemphasizes the significance of resale because it fails to consider the trends affecting this strategy.

10. The most relevant fact concerning resale is the fact not mentioned by the Wakeling Affidavit -- resale is eroding rapidly in both Louisiana and Georgia. Far from being irreversible, the strategy is in reverse . Table 2 (below) compares BellSouth's resale volumes for July 2001 (reported in the Wakeling Affidavit) with the resale volumes BellSouth had earlier reported to the Commission in December 2000, as well as just a few months earlier in its State 271 proceedings before the Louisiana and Georgia Commissions.

Table 2: The Constant Erosion of Resale

	December 2000[6]	Mid-Period[7]	July 2001	Decline Since December
Louisiana	105,045	95,574	85,682	-18.4%
Georgia	144,398	119,316	100,493	-30.4%

11. As shown in Table 2, the decline in resale activity is both substantial and ongoing. At its current rate, resale will contract by more than 30% in Louisiana, and by more than 50% in Georgia, by the end of this year. Even without considering these reductions -- and accepting, for the moment, BellSouth's analysis in its entirety -- resale only achieved a penetration of 2-3% and cannot seriously be portrayed as demonstrating "vibrant local competition."[8] The only conclusion supported by BellSouth's resale statistics is the conclusion already reached by virtually every competitive entrant – resale is a commercial failure, in large measure because it *never* provides an entrant access to the local network on terms equal to those of the ILEC.[9]

[6] Source: BellSouth Form 477 Reports to the FCC – Corrected. During the review of BellSouth's local competition statistics in the States, BellSouth acknowledged that it had inflated its local competition statistics to the FCC by double-counting UNE-P lines as resale lines (as well as UNEs). The resale volumes in Table 2 have been corrected by removing UNE-P volumes reported in Form 477 from the resale volumes in those same reports.

[7] Source: BellSouth Pre-filing Affidavits in Georgia (April 01 data) and Louisiana (January 01 data).

[8] Brief of BellSouth, CC Docket 01-277, October 2, 2001, page 1.

[9] Because BellSouth remains the access provider the resale-based CLEC's end-users, the CLEC cannot effectively integrate local and long distance services, or offer other innovations, as would be possible using UNEs or other facilities.

UNE-Based Competition

12. As noted at the outset, there should be little controversy regarding the *level* of competition using UNEs because such competition should be known to BellSouth with certainty. What is important to appreciate with respect to UNE-based competition is not its absolute level, however, but its *implication* for judging whether BellSouth actually offers nondiscriminatory access to the existing network. Simply stated, the status of UNE-based competition is the most useful measure of whether BellSouth is actually offering competitors nondiscriminatory access to the existing network because UNEs are the means by which that access is offered. Unbundled network elements are the offering of generic transmission and switching capabilities at cost-based rates – the very essence of nondiscriminatory access.

13. The two most prevalent forms of UNE-based entry are UNE-Loops (combined with a CLEC-provided local switch) and UNE-Platforms (the loop combined with unbundled local switching and shared transport). As shown in Table 3, however, neither form of UNE-based entry has achieved a significant market share in these States, even after more than five years of competition.[10]

[10] Market share calculations shown in Table 3 are based on BellSouth's estimate of the overall market, including BellSouth's estimate of its own lines in these States. Later analysis will demonstrate that CLEC share declines significantly once BellSouth's estimates are adjusted to include all of BellSouth's lines.

Table 3: Status of UNE-Based Entry

UNE Strategy	Georgia			Louisiana	
	CLEC Lines	Relative Share		CLEC Lines	Relative Share
UNE-Loop	84,219	1.7%		16,917	0.7%
UNE-P	144,420	3.0%		14,964	0.6%
	228,639	4.7%		31,881	1.2%

14. As Table 3 demonstrates, UNEs have gained less than 5% of the market in Georgia, and only 1.2% penetration in Louisiana. Significantly, in Georgia, UNE-P has achieved nearly twice the penetration of loops provisioned individually, even though BellSouth delayed its availability until February of last year.[11] The relatively larger UNE share in Georgia is partially explained by the Georgia Commission's more aggressive (relative to Louisiana) actions to make UNE-P viable in that State. In contrast, UNE activity is barely measurable in Louisiana, irrespective of the configuration strategy (i.e., the use of UNEs individually or in combination).

15. As noted earlier, UNEs are intended to be the vehicle by which BellSouth makes the existing network available to entrants on terms no less favorable than that experienced by its own retail operations. If the full economies of scale and scope enjoyed by this inherited resource were available to all CLECs, then the Commission should expect to see meaningful share gain and extensive competition. Indeed, there is evidence that the basic intent of the Track A review process was so that commercial experience

[11] Source: BellSouth Ex Parte, Federal Communications Commission, CC Docket 96-98, October 13, 2000.

could be used by the States (and this Commission) to validate ILEC claims of Checklist Compliance. [12]

16. Significantly, the goal of the Telecommunications Act was not local competition *someday*, after entrants had the opportunity to duplicate the incumbent's network. Rather, the Act and its sponsors made clear that the goal was *shared* access to the inherited exchange network, so that competition could occur rapidly and broadly throughout a State. As the Commission has previously noted, Congress fully expected that entrants could quickly expand service because of the Act's requirements that the network be open and accessible to rivals – conditions only satisfied through access to UNEs:

> The requirement of an operational competitor is crucial because … whatever agreement the competitor is operating under must be made generally available throughout the State. Any carrier in another part of the State could immediately take advantage of the "agreement" and be operational fairly quickly. By creating this potential for competitive alternatives to flourish rapidly throughout a State, with an absolute minimum of lengthy and contentious negotiations, once an initial agreement is entered into, the Committee is satisfied that the "openness and accessibility" requirements have been met. [13]

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[12] As explained by the Joint Explanatory Statement of the Committee of Conference, page 33. (emphasis added):

> The requirement [in 271(c)(1)(A)] that a BOC "is providing access and interconnection" means that the competitor has implemented the agreement and the competitor is operational. This [Track A] requirement is important because it will assist the appropriate State commission in providing its consultation and in the explicit factual determination … that the requesting BOC has fully implemented the interconnection agreement elements set out in the "checklist" under new section 271(c)(2).

[13] The House Report is particularly important in this regard, because Section 271(c)(1)(A) "comes virtually verbatim from the House amendment." See Joint Explanatory Statement, page 33, and Memorandum and Order, Federal Communications Commission Docket 97-137, ("Michigan Order"), August 19, 1997, footnote169.

17. Clearly, the Telecommunications Act was *supposed* to provide entrants the same access to the existing exchange network (through UNEs) that BellSouth inherited. Yet, while the entire CLEC community in Georgia and Louisiana gained only just over 260,000 UNE-based lines since the Act's passage,[14] BellSouth added more than 4.9 million lines in roughly the same period.[15] If a key goal of Telecommunications Act is to grant entrants nondiscriminatory access through the unbundling obligation – and if the purpose of Section 271(c)(1)(A) is confirm compliance through tangible results – then the level of competition in both Georgia and Louisiana only demonstrates that this promise of nondiscriminatory access has not been realized.

Other Entry

18. As explained earlier, more than half of the competition that BellSouth claims exists in Georgia and Louisiana is attributed to entrants using facilities that are either self-provided, obtained from third parties, or leased from BellSouth as other than UNEs. Because BellSouth does not have an ability to measure these facilities directly, it estimates these lines served through other measures, such as E911 listings and interconnection facilities.

[14] Specifically, entrants gained only 228,639 UNE lines in Georgia and 31,881 in Louisiana.

[15] Source: BellSouth ARMIS 43-08, Total Access Lines in Service (2000-1995). The gain in total access lines was 3,803,862 in Georgia and 1,098,821 in Louisiana. This comparison may understate BellSouth's actual gain, however, because CLEC lines are as of July 2001, while BellSouth's statistics are only current through December 2000.

19. Significantly, BellSouth ignores the most direct measure available to evaluate such "Other Entry" – the actual traffic using the interconnection facilities between it and other CLEC networks. This measure is particularly useful because it provides insight not only into the competitive *penetration* achieved by "other entrants," but it also provides insight into the *types* of customers such carriers have attracted.

20. An evaluation of the interconnected traffic patterns across the BellSouth region demonstrates a systematic pattern of asymmetric traffic exchange. Table 4 (below) summarizes the most current data released by BellSouth describing the traffic volumes exchanged on the interconnection facilities between it and other CLECs.

Table 4: Interconnected Traffic Patterns
BellSouth Region – 2001 (minutes of use)[16]

State	CLEC Originated	CLEC Terminated	Percent Termination
Alabama	117,617,713	1,139,000,361	90.6%
Florida	1,248,047,630	10,472,052,065	89.4%
Georgia	Discovery Not Permitted		
Kentucky	137,845,925	2,347,232,880	94.5%
Louisiana	Discovery Not Permitted		
Mississippi	90,020,136	829,298,290	90.2%
North Carolina	489,940,402	2,600,691,106	84.1%
South Carolina	177,329,655	971,667,908	84.6%
Tennessee	548,262,551	6,013,863,665	91.6%

21. As the above table clearly shows, the traffic being exchanged between BellSouth and the CLECs is heavily skewed by the terminating traffic volumes typically associated with serving ISP customers. There is no question that CLECs enjoyed early marketing success serving a unique category of customer, the Internet Service Provider (ISP). This

[16] Source: Various BellSouth Responses to Requests for Information during its State-level Section 271 proceedings. The dates of individual responses vary, but the data are generally from the second quarter of 2001.

unique circumstance, however, should be acknowledged for what it is – a *unique* circumstance, that may well be transitional, but which is not a useful measure of CLEC gains in the broader market of conventional end-users.[17] The real measure of whether the nondiscriminatory access required by the Telecommunications Act is being offered is whether CLECs are gaining any appreciable share of the conventional end-user market, which is the core of BellSouth's local monopoly.

22. There should be no dispute that the fundamental goal of the Telecommunications Act was competition for average consumers, both residential and small businesses with conventional communications needs. Certainly, Congress expected widespread competition, explaining:

> … meaningful facilities-based competition is possible, given that cable services are available to more than 95% of United States homes. Some of the initial forays of cable companies into the field of local telephony therefore hold the promise of providing the sort of local residential competition that has consistently been contemplated.[18]

While the *cable*-option has not produced the competition hoped-for in the passage above, the Act itself did not rely upon a single technology or entry strategy. Rather, the Act offered entrants shared access to the existing network so that its economies of scale and scope would become a competitive enabler instead of competitive barrier.

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[17] I do not intend to imply that ISP customers are not end-users as a legal issue. My only point here is that the CLECs' success with this customer segment should not be used to distort measures of the CLECs' penetration in the broader local market as contemplated by the Telecommunications Act – i.e., the core market of conventional residential and business customers.

[18] *Ibid.*

23. The usefulness of interconnected minutes as a measure of competitive activity is that interconnect minutes can be used to estimate the number of conventional lines (i.e., non-ISP lines) being served by CLECs. These conventional switched-service lines can be estimated directly from the originating minutes (i.e., those minutes that originate with CLEC customers) that traverse the interconnection facilities by dividing the total minutes by the average usage of a conventional switched-service customer.

24. Unfortunately, the two states before the Commission in this application (Georgia and Louisiana) are the *only* two states for which BellSouth has not disclosed originating usage (indeed the Georgia Commission did not permit any discovery). However, data from BellSouth's other States can be used to estimate the originating usage for Georgia and Louisiana because of the near-perfect correlation[19] between originating usage and interconnection trunks (which are known for all states). The data used for this calculation – and the resulting estimation model – are presented in Attachment A.[20]

25. Converting originating CLEC usage to an estimate of the number of conventional CLEC lines is straightforward. Table 5 presents these calculations for both Georgia and Louisiana. The analysis begins with the number of minutes originating with CLEC customers and terminating on BellSouth's network estimated by the model described above. Assuming that average CLEC customer has the same minutes per line as the

[19] The correlation coefficient between originating monthly usage and interconnection facilities in the BellSouth region is 0.999.

[20] It is important to note that this step in the estimation process is necessary only because the Georgia and Louisiana Commissions did not permit discovery in their review of BellSouth's claims. The Commission can easily confirm the accuracy of the estimates provided here for Georgia and Louisiana by requesting that BellSouth supply the same originating usage information for these States that it supplied in every other jurisdiction. This data can then be substituted for the estimates provided here.

average BellSouth customer, the analysis then estimates the number of conventional lines served by CLEC switches.[21]

Table 5: Estimating Conventional Lines Served by CLEC-Facilities

	Georgia	**Louisiana**
Originating CLEC Minutes/Month[22]	181,937,824	52,602,305
Average usage per line[23]	1,379	1,259
Conventional CLEC Lines "on switch"	131,935	41,781
UNE-Loops	84,219	16,917
Other Conventional Lines	47,716	24,864

26. As shown in Table 5, the number of conventional CLEC lines served by CLEC switches is 24,864 in Louisiana and 47,716 lines in Georgia. Table 5 further disaggregates these lines into UNE-Loops and "Other" arrangements, which would include facilities supplied by the CLEC, a third-party, or leased from BellSouth as special access.[24] Although BellSouth estimates the "Other Line" category in Georgia exceeds

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21 To the extent that the average CLEC customer has more local usage than the average BellSouth customer, this assumption will overstate the number of CLEC lines.

22 Source: Attachment A.

23 Source: Local Usage Assumptions adopted by the Commission to model universal service costs using the HCPM. The usage levels used in the BCPM appear conservative. An evaluation of BellSouth's State DEM volumes reported through ARMIS 43-04 (less the intrastate access minutes reported in ARMIS 43-08) produce slightly higher average usage statistics of 1,519/line (Georgia) and 1,302/line (Louisiana). If these higher ARMIS-derived estimates of average usage were used in the analysis above, the number of CLEC conventional lines would decline. Consequently, the analysis should be viewed as producing an upper-bound of the number of conventional switched-services lines provide by CLECs using their own facilities (including stand-alone local loops).

24 The methodology in Table 5 estimates the *total* number of CLEC lines used to provide conventional services. The disaggregation between UNE-Loops and "Other" *assumes* that all UNE-Loops are used for conventional services. Because it is likely that at least some (if not most or many) UNE-Loops are used for other than conventional services, the disaggregation between these two sub-categories of "On Switch" lines may overstate UNE-Loops and understate "Other" lines.

more than 477,000 lines (and is approximately 102,000 lines in Louisiana), there are simply not traffic volumes anywhere near the levels needed to confirm these claims.

27. It is critically important to place market share statistics in the appropriate context. While CLECs have *been* successful attracting emerging ISP customers, this isolated (and perhaps transitional) success should not be used – as BellSouth certainly does – to suggest a comparable CLEC penetration in the more conventional local exchange marketplace. As shown in Table 6, when the analysis focuses on this core market – and a market into which the Telecommunications Act certainly intended to introduce competition -- CLEC penetration is marginalized in both States. Indeed, Table 6 exposes the fact that conventional-services competition in Louisiana is dependent almost entirely on resale, even though resale would decline by more than 30% this year alone (if trend in the first half of the year continues). This isn't vibrant local competition, this is disappearing local competition.

Table 6: Estimated CLEC Market Share
Conventional Switched Services Market

Entry Strategy	**Georgia**			**Louisiana**	
	Lines	**Share**		**Lines**	**Share**
Resale	100,493	2.3%		85,682	3.5%
UNE-P	144,420	3.3%		14,964	0.6%
Other "On Switch"[25]	131,935	3.0%		41,781	1.7%
Total CLEC	376,848	8.5%		142,427	5.8%
BellSouth Switched Lines	4,060,844			2,333,635	

28. If the purpose of a market share analysis is to look beyond the conventional services market, then it is important that the analysis appropriately consider all of the

[25] Includes UNE-L, CLEC facilities, third-party facilities and facilities leased from BellSouth (such as special access) used to offer conventional (i.e., non-ISP) services.

lines provided by BellSouth, not just those that BellSouth considers “switched service.” The analysis sponsored by BellSouth, however, excludes lines that BellSouth considers “special access,” thereby artificially reducing the evidence of its market dominance. Even if BellSouth’s entire estimate of CLEC activity is accepted without challenge – but the analysis then considers all of BellSouth’s lines – BellSouth’s dominance of this “total market” is not materially different than its dominance of the “conventional” market shown above (*see* Table 7 below). In other words, even if the Commission viewed CLEC competition for ISP-customers as somehow validating BellSouth’s claim that the local market is open – an assumption that I would accept only to make the following point – then even *that* comparison (properly made, considering all of BellSouth’s lines) shows that the market continues to be dominated by BellSouth.

Table 7: CLEC Market Share – Total Market (Accepting BellSouth Claims)

Entry Strategy	Georgia			Louisiana	
	Lines	Share		Lines	Share
Resale	100,493	1.2%		85,682	2.5%
UNEs	228,639	2.8%		31,881	0.9%
Other	477,684	5.8%		101,910	3.0%
	806,816	9.7%		230,786	6.4%
BellSouth Total Lines[26]	7,476,433			3,194,434	

29. The principal difference between BellSouth’s “switched” line count and its “total” line count are lines that BellSouth considers “special access.” The “special access line” is largely a consequence of the interLATA line-of-business restriction that BellSouth seeks to have removed in this proceeding. In simple terms, customers make two types of

[26] Source: Total Access Lines, ARMIS 43-08, less resale and UNE-P lines reported in Wakeling affidavit.

calls: local calls and long distance calls. Many larger customers separate these calls between two types of connections – so called "switched access lines" (for calls that BellSouth can handle), and "special access lines" (for calls that BellSouth cannot).[27] This distinction, however, does not fundamentally change the service the customer is receiving, it only changes which carrier (BellSouth or a long distance company) terminates the call. Significantly, CLECs typically offer integrated services that render any distinction between "switched" and "special" lines irrelevant – CLEC lines are *both* "switched" and "special" because they handle both local and long distance calls. Consequently, even if BellSouth accurately estimated CLEC lines -- and it is appropriate to weigh equally lines serving the unique ISP-market with lines used to offer service to more conventional end-users – the BellSouth analysis significantly inflates CLEC market share by arbitrarily excluding the lines BellSouth considers "special access."

Premature Entry and Local Competition

30. Like other applicants before it, BellSouth claims that local competition would be accelerated by its grant of interLATA authority. Nothing could be further from the truth. It is true that New York and Texas are the most competitive markets in the nation. But this fact only proves that local competition develops once threshold *conditions* for local competition are in place. BellSouth confuses the cart with the horse when it claims that interLATA relief promotes local competition.

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[27] These "special access lines" connect directly to a long distance carrier's switch.

31. Consider the following. Assume for the moment that BellSouth's claim has merit – that is, whether an RBOC can offer long distance service is the determining factor for local competition. If true, then anywhere an ILEC *can* offer long distance service should see the *most* local competition. This would mean that local competition should be the most robust in the territories where GTE (now Verizon) began offering long distance service immediately upon passage of the Act, if not in its rural exchanges, then at least in areas such as Los Angeles and Tampa where its markets are similar to those of an RBOC. As shown in the following table, however, local competition was still nonexistent in these areas more than three years after GTE began offering long distance service.[28]

Table 8: Local Competition in GTE Territory
(June 1999)

	California	Florida
UNE Loops	0.3%	0.0%
Resale	1.5%	2.4%

32. Moreover, BellSouth never explains why competitive entry by other Regional Bell Operating Companies (who, by definition, have no "strategic" reason for avoiding local entry) has not occurred.[29] Nor has BellSouth ever explained why it has never seriously pursued entry outside its region (but still within the United States). Like the "dog that did not bark" from the Sherlock Holmes tale, the lessons that can be drawn from the RBOCs' decisions to avoid out-of-region entry are that (a) the RBOCs

[28] Table 8 uses the most current publicly available information filed by GTE. Source: GTE Response to the FCC's 5th Survey of Local Competition. Data as of June 30, 1999.

[29] Atlanta Journal-Constitution, March 3, 2001, *"SBC retreats from Atlanta"*, Michael E. Kanell; Wall Street Journal, February 28, 2001, "*Verizon is Closing OneSource Unit That Competed With Bell Titans*," Shawn Young.

understand the moves would be unsuccessful given the state of RBOC compliance, and (b) that there is no real competitive threat from those CLECs that have tried to establish national footprints.[30] As a result, it is more profitable to "respect" each other's markets than compete.[31]

Conclusion

33. The existing network represents the cumulative investment of more than 100 years, much of it protected by government regulation. Unless entrants are assured nondiscriminatory access to this inherited resource, only BellSouth will be in a position to offer packages that combine local service with other products (such as Internet access and long distance) broadly across the market. The inevitable result of such an advantage would be for BellSouth to gain even *greater* dominance in the future than it enjoys today.

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[30] The common theory underlying the SBC/Ameritech and Bell Atlantic/GTE mergers was that a national-local market was emerging because some CLECs (such as AT&T and MCI) could theoretically offer service in multiple cities. As explained by SBC (Affidavit of James Kahan, Federal Communications Commission in CC Docket No. 98-141, ¶ 13):

> ... SBC must develop the capability to compete for the business of large national and global customers both in-region and out-of-region. We cannot remain idle while our competitors capture the huge traffic volumes generated by a relatively small number of larger customers.

The fact that each RBOC has abandoned its national strategy means that the predicate to the national-local dynamic – i.e., the presence of a meaningful national-local competitor – does not exist. While several CLECs have established multi-city networks, the RBOCs understand that none poses a sufficiently serious competitive threat to warrant an RBOC response.

[31] To put it bluntly, the RBOCs have essentially become an ILEC-OPEC, more comfortable with their monopolies than concerned with head-to-head competition.

34. BellSouth fully understands this unprecedented opportunity. As described by BellSouth's CEO Duane Ackerman, BellSouth is in a position to quickly win "in the 25 to 30 percent market share" for long distance, "with a "quick couple of billion" flowing to the bottom line as profit.[32] These predictions are consistent with the actual results from Texas where SBC gained, in less than a single year,[33] a market share greater than that which took MCI and Sprint *together* more than two decades to achieve.[34]

35. What is at stake is nothing less than the future of competition for telecommunications – and not just for local service, but other complementary products such as long distance and advanced data services as well. If BellSouth maintains its local monopoly, while obtaining interLATA authority nevertheless, the Commission should anticipate a reintegration (and thus remonopolization) of the local and long distance markets, with similar dominance extended to the advanced services market. There is only one point at which the Commission can avoid such an outcome – at the time it determines that BellSouth "has done enough" to open the local market to competition and may begin offering long distance service.[35]

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[32] *See* "BellSouth Remains Confident, But Cautious About Growth," Atlanta Journal and Constitution, June 3, 2001.

[33] On March 1, 2001 – less than a year after obtaining in-region long distance authority from the FCC – SWBT announced that it had obtained more than two million long distance lines in Texas. Source: *SBC Updates Progress in Major Growth Drivers, Reaffirms Target of 11-14 Percent Earnings Per Share Growth in 2001*, SBC Press Release (March 1, 2001).

[34] SBC's claim of 2 million long distance customers in Texas equates to a market share of roughly 22.4%. At the end of 1996 (approximately 20 years after MCI first introduced its Execunet Service), MCI and Sprint together had 21.9% of the market. Source: *Long Distance Market Shares* (4th Quarter 1998), Federal Communications Commission, March 1999.

[35] Notably, granting BellSouth interLATA authority will increase its market position at the very *same* time that the Act's sole financial incentive to comply with its market opening provisions is removed.

36. This concludes of my affidavit.